

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

4 | VS.

Criminal No. 13-270

5 ATIBA WARREN,
Defendant.

Transcript of Motion Proceedings on Tuesday, March 1,
8 2016, United States District Court, Pittsburgh, Pennsylvania,
before Mark R. Hornak, District Judge.

10

For the Government:

Katherine A. King, Esq.
Jonathan B. Ortiz, Esq.
Assistant U.S. Attorney
400 US Courthouse
700 Grant Street
Pittsburgh, PA 15219

For the Defendant:

Mark A. Sindler, Esq.
310 Grant Street
Suite 2330 Grant Building
Pittsburgh, PA 15219

Court Reporter:

Juliann A. Kienzle, RMR, CRR
5300 U.S. Courthouse
700 Grant Street
Pittsburgh, PA 15219
(412) 261-6122

Proceedings recorded by mechanical stenography; transcript
25 produced by computer-aided transcription.

1 (Proceedings held in open court; Tuesday, March 1, 2016.)

2 THE COURT: We're here today in the case of the
3 United States of America versus Mr. Atiba Warren.

4 Will counsel for the United States please enter
5 there appearance.

6 MS. KING: Good morning, Your Honor. Katherine King
7 for the United States.

8 THE COURT: Good morning, Ms. King. Good to see
9 you.

10 MR. ORTIZ: Jonathan Ortiz.

11 THE COURT: Good morning, Mr. Ortiz. Good to see
12 you.

13 Will counsel for Mr. Warren please enter his
14 appearance.

15 MR. SINDLER: Mark Sindler.

16 THE COURT: Good morning, Mr. Sindler. Good to see
17 you.

18 Mr. Warren is seated next to you at counsel table;
19 is that correct?

20 MR. SINDLER: Yes.

21 THE COURT: This is a matter that previously had
22 come to the Court for a trial by jury that resulted in a
23 convict of Mr. Warren. The matter was otherwise set for
24 sentencing to occur this Friday morning on February 23rd at ECF
25 No. 155.

1 Mr. Sindler, you filed a motion entitled Motion For
2 Leave of Court to Withdraw As Counsel.

3 You reflected, among other things, in that motion
4 that at Paragraph 10, that you had provided Mr. Warren with a
5 copy of the pleading under separate cover sent to him by United
6 States mail on the date on which it was filed of record.

7 Mr. Warren, did you receive a copy of Mr. Sindler's
8 motion to withdraw, sir?

9 THE DEFENDANT: I did.

10 THE COURT: Mr. Warren, I would also note that at
11 ECF No. 153, I did receive from you a letter dated February 8,
12 2016. I did read that letter. I wanted you to know that. I
13 made it available to Counsel Only on the docket of the Court,
14 not as a publicly filed document.

15 THE DEFENDANT: Thank you, Your Honor.

16 THE COURT: Mr. Sindler, in your motion at Paragraph
17 9, you specifically requested a hearing on the merits of the
18 motion and a request and that Mr. Warren be present.

19 Mr. Warren, is, of course, present today.

20 I'm happy to hear from you further, Mr. Sindler.

21 MR. SINDLER: We have reached a point, my client and
22 I, I would just be repeating what I stated in a couple of the
23 paragraphs that is a public record where he not only questions
24 my loyalty to him, which is supposed to be and should be
25 without any reservation between an attorney and his client.

1 And then separately, I believe, and perhaps a cause
2 of No. 1, is a second problem with respect to irreconcilable
3 differences. The best that I can say, at least in the presence
4 of the government right now, and if we went further, even if it
5 was *ex parte*, I would need Mr. Warren's approval or
6 authorization to speak to specifically why I believe we have
7 reached a point of irreconcilable differences. It speaks
8 specifically to where we're headed next. It was supposed to be
9 this Friday, which is the sentencing hearing with respect to
10 the jury's verdict in this case. That's been put off, as I
11 understand it. It will be rescheduled, I know that, but I'm
12 not at liberty right now, and I'm not going to do it in front
13 of Ms. King or Mr. Ortiz to speak to those differences. I
14 think it's best left to an *ex parte* proceeding before you and
15 we would speak about just that.

16 THE COURT: Thank you, Mr. Sindler.

17 Mr. Sindler, you're certainly welcome to address the
18 Court either standing or seated.

19 Ms. King and Mr. Ortiz, likewise for you.

20 Same for you, Mr. Warren.

21 Mr. Sindler, do you mind if I ask your client a few
22 questions and if at any point along the way you think my
23 question is inappropriate or that your client's answer should
24 be constrained, you're certainly free to step in.

25 But with those provisos, sir, do you have any

1 objection if I ask you client a few questions?

2 MR. SINDLER: I don't. He always has, as any client
3 would, the authority to waive his own -- the confidentiality
4 applies to attorney-client communications. The only thing I
5 would ask and I'm sure Mr. Babik is going to do it, is that he
6 be placed under oath.

7 THE COURT: We will do that, and I'll give him an
8 admonition regarding attorney-client privilege.

9 Mr. Babik, would you please administer an oath to
10 Mr. Warren.

11 (Administration of the oath.)

12 MR. BABIK: State your name for the record.

13 THE DEFENDANT: Atiba Warren.

14 THE COURT: Mr. Warren, I would like to ask you a
15 few questions, sir. Before I do that, I would like to advise
16 you, something that Mr. Sindler may well have already advised
17 you, in answering any of my questions, I'm not asking you to
18 disclose and you should not disclose without consultation with
19 your lawyer the contents of any communication, written, spoken
20 word, any other way that you've had communication with
21 Mr. Sindler about your case or anything having to do with
22 representation. I'm not asking you to disclose anything you've
23 told Mr. Sindler, any investigators or colleagues he's had
24 working on your case. I'm not asking you to disclose anything
25 any of them may have told you regarding your case.

1 Do you understand that, sir.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Mr. Warren, the reason I'm giving you
4 that instruction is that those communications were
5 presumptively covered by something known as the attorney-client
6 privilege. If you would disclose anything that you've told
7 Mr. Sindler or anybody working with him on the defense of your
8 case, or anything that they've told you, the United States,
9 within their rights, may well take the position that by doing
10 so, you've given up the attorney-client privilege either as to
11 those communications themselves or perhaps to all of the
12 communications along those lines.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Mr. Sindler, just to confirm, within the
16 last 24 hours, sir, have you taken any prescribed or
17 non-prescribed medicine or drugs.

18 MR. SINDLER: Mr. Warren?

19 THE COURT: Mr. Warren, I'm sorry, in the last 24
20 hours, sir, have you taken any prescribed or non-prescribed
21 medicine or drugs.

22 THE DEFENDANT: I take medicine.

23 THE COURT: Prescribed for you by a doctor.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you taken it exactly as it has been

1 prescribed for you by a doctor.

2 THE DEFENDANT: Exactly to a tee.

3 THE COURT: In your experience, sir, when you take
4 that medicine, does it get in the way of you understanding what
5 is going on around you?

6 THE DEFENDANT: No, sir.

7 THE COURT: You understand what is happening here in
8 federal court today?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Warren, did you hear Mr. Sindler
11 tell the Court, just as he did in the papers that you said you
12 got a copy of, that in his professional assessment and
13 judgment, his representation of you cannot continue because
14 there are irreconcilable differences between him and you
15 regarding the conduct of your case.

16 THE DEFENDANT: Yes, I did, Your Honor.

17 THE COURT: Do you agree with Mr. Sindler's
18 assessment in those regards or do you disagree?

19 THE DEFENDANT: 100 percent.

20 THE COURT: 100 percent which way?

21 THE DEFENDANT: I agree with him.

22 THE COURT: Mr. Warren, you understand that the last
23 remaining matter to occur on your case in this court is for the
24 Court to hear from the lawyers, both Mr. Sindler, Ms. King and
25 Mr. Ortiz, and then at a hearing in your presence, after I hear

1 from you personally and directly to determine what the sentence
2 will be in your case.

3 You understand that's the last remaining thing in
4 your case?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Mr. Warren, do you believe that based on
7 your stated agreement with Mr. Sindler, that he can or cannot
8 represent you regarding your sentencing in this case?

9 THE DEFENDANT: I believe he cannot properly
10 represent me.

11 THE COURT: Okay.

12 Did you hear Mr. Sindler tell the Court that he
13 believes that you believe that you have some doubts as to his
14 loyalty to you and to the defense of your case?

15 THE DEFENDANT: He would be totally correct.

16 THE COURT: So you heard him say that and you agree
17 with his assessment of that situation.

18 THE DEFENDANT: Yes, Your Honor?

19 THE COURT: Let me ask you this, Mr. Warren. If I
20 would grant Mr. Sindler's motion, what would happen next is the
21 Court would cause the appointment of a new lawyer for you
22 relative to your sentencing.

23 Do you understand that, sir?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you understand, sir, whoever that

1 lawyer is, they would not have had the benefit of working with
2 you and representing you during the pretrial and trial
3 proceedings in your case.

4 Do you understand that?

5 THE DEFENDANT: Yes, I would, Your Honor.

6 THE COURT: They would, therefore, have to become
7 familiar with those proceedings, but they would not be the same
8 as if they were a participant or eyewitness, if you will, to
9 having been at your trial.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand, sir, that the lawyer
13 that would be appointed for you, while they would be competent
14 and qualified and experienced, it may turn out that you might
15 conclude that they're not as experienced in federal court
16 proceedings or in federal court sentencing matters as you would
17 believe Mr. Sindler is.

18 Do you understand that, sir?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Are you willing to live with that state
21 of affairs if I granted Mr. Sindler's motion to withdraw?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you understand that whoever that new
24 lawyer is, if I did appoint a new lawyer, would take some
25 reasonable period of time to get up to speed, if you will, on

1 your case, and the issues that are involved in sentencing and
2 it may, therefore, lead to a delay in your sentencing hearing,
3 beyond the date when it would be set if Mr. Sindler continued
4 as your lawyer?

5 THE DEFENDANT: Yes, Your Honor. I'm totally aware
6 of that.

7 THE COURT: You'd be okay with that result?

8 THE DEFENDANT: I would be okay as long as it
9 wouldn't go past a certain time period.

10 THE COURT: Well, let me say this, Mr. Warren.

11 It would be my responsibility to make sure that any
12 new lawyer had a reasonable period of time to consult with you,
13 to advise you, to give you her or his best advice regarding
14 positions to be taken at sentencing, to become familiar with
15 the record, to file whatever she or he thought was appropriate
16 with the Court, and if they asked for that reasonable period of
17 time, I would be duty bound to provide it to them.

18 Do you understand that?

19 THE DEFENDANT: Yes, I do, Your Honor.

20 THE COURT: Do you understand, therefore,
21 Mr. Warren, it's a matter of certainty that if there is a new
22 lawyer appointed for you, your sentencing will occur at a date
23 later than it would have if Mr. Sindler had continued as your
24 lawyer?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Ms. King and Mr. Ortiz, does the United
2 States have a position regarding the grant or nongrant of the
3 motion filed by Mr. Sindler?

4 MS. KING: No, Your Honor.

5 THE COURT: I didn't think so, but I wanted to make
6 sure.

7 Mr. Sindler, let me ask you this, sir.

8 Given the responses Mr. Warren has given to the
9 Court in response to the Court's question, do you believe that
10 it's necessary for the Court's rendering of a decision or for
11 any other reason appropriate to the situation we're in, for a
12 more expansive, underlying factual record to be made, given the
13 certainty, if you will, of Mr. Warren's responses to the
14 Court's questions?

15 MR. SINDLER: I can't think of one, no.

16 THE COURT: I didn't either but I wanted to check
17 with you, sir, because I thought there might be something I
18 might be missing.

19 Mr. Warren, so that you're familiar with the
20 process, Mr. Sindler was appointed to serve as your counsel as
21 what is known as a CJA lawyer, Criminal Justice Act panel
22 lawyer.

23 Do you understand that, sir?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: He was appointed to that position under

1 what is known as the CJA plan adopted by the judges of this
2 court.

3 If somebody who is a CJA-appointed lawyer is, for
4 good reason, relieved of further responsibility in your case,
5 then the Court in applying that plan would cause a new lawyer
6 to be appointed.

7 Do you understand that, sir?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: The way that works, under the plan, is
10 the Court notifies the Office of the Federal Public Defender
11 for our district and they would identify a lawyer to serve as
12 your next lawyer, if they're willing to undertake the
13 appointment.

14 Do you understand that, sir?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you have any problems with any of
17 that, sir?

18 THE DEFENDANT: So, you're telling me I would get a
19 Federal Public Defender?

20 THE COURT: Well, you could, if they believed that
21 they were qualified under the law to serve, or they would
22 identify a private practice lawyer, just as Mr. Sindler is, who
23 is on the Court's approved CJA panel and they would notify the
24 Court as to who that is.

25 Do you understand that, sir?

1 THE DEFENDANT: Yes, I understand that. It wouldn't
2 be anybody that I had a prior conflict with, would it?

3 THE COURT: It would not be anybody that you have a
4 conflict of interest under the law with, no, they would have to
5 verify that that did not exist because otherwise, we would just
6 be starting over again.

7 THE DEFENDANT: Okay. Thank you.

8 THE COURT: Is that helpful to you, sir?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: I would note for the record that present
11 in the courtroom is the First Assistant Federal Public
12 Defender, Mr. Novara who I take it was otherwise in building
13 today?

14 MR. NOVARA: That's correct, Your Honor.

15 THE COURT: Thank you for stopping by, sir.

16 It's your office that handles the mechanics of the
17 CJA appointment process?

18 MR. NOVARA: Administratively, yes, Your Honor. If
19 new counsel is necessary, we will get a CJA private attorney
20 for Mr. Warren.

21 THE COURT: Thank you, Mr. Novara, I appreciate it.

22 I also note present in the courtroom is one of your
23 colleagues Mr. Adepoju, who is an Assistant Federal Public
24 Defender.

25 Thank you for stopping by, Mr. Adepoju.

1 Mr. Sindler, I'm going to grant your motion.

2 I'm going to grant your motion on the following
3 grounds: I know given the nature, scope and extent of your
4 experience as a lawyer who devotes their practice to the
5 representation of men and women who are charged with serious
6 criminal offenses, including felony offenses in this court,
7 that this is not the type of motion that is lightly made. It
8 is made at a juncture in the case where I find and conclude it
9 would be made with requisite probity.

10 Mr. Warren has confirmed on the record under oath in
11 open court that he has seen and read the motion that you had
12 filed, that he had considered it, that he heard you reaffirm
13 and reinforce the matters set forth in your motion, that he
14 concurs with the conclusions you've reached in those regards.

15 Mr. Warren, just to confirm, did you discuss with
16 Mr. Sindler the motion he had filed and the basis for him
17 filing it in this court?

18 THE DEFENDANT: Yes, I did, sir.

19 THE COURT: He's explained to you why he believed it
20 was necessary for him to file it?

21 THE DEFENDANT: We came to a mutual agreement.

22 THE COURT: He explained to you his reasoning as to
23 why he thought it should be filed?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is there anything about his reasoning or

1 basis that you disagreed with?

2 THE DEFENDANT: No, I agree 100 percent, Your Honor.

3 THE COURT: Based on Mr. Warren's affirmation on the
4 record that there has reached a point in the relationship, the
5 professional relationship between him, his client, and you,
6 Mr. Sindler as the lawyer, that he concurs with your assessment
7 that he believes that there is a question as to your undivided
8 loyalty to him. And in that regard, I make no finding in that
9 regard. I want the record to be clear. I'm not making a
10 finding or conclusion that there was any diminution or
11 limitation on your loyalty as counsel to him.

12 I do find and conclude that he believes that. He
13 subjectively believes that, and based on the Court's
14 observations here in open court, I find and conclude that he
15 appears to do that with what is, in his mind, a sound basis for
16 coming to that conclusion.

17 Mr. Warren, do you understand when we use the term
18 "irreconcilable differences," that means that the Court would
19 are to conclude that with further discussion, consultation,
20 one-on-one communication, whatever the differences are
21 regarding your case with Mr. Sindler cannot be solved.

22 Is that what you're telling me, sir? If I asked you
23 and Mr. Sindler to talk about this in greater detail for a
24 greater length of time, you've come to the conclusion that the
25 differences are such that they can't be resolved?

1 THE DEFENDANT: I do, Your Honor.

2 THE COURT: Do you understand, Mr. Warren, that
3 whoever your lawyer is duty-bound to give you their best
4 judgment and their best advice, even if they believe or even if
5 they know that you will disagree with that, they are still
6 required, as your lawyer, to give you that judgment and advice.

7 Do you understand that, sir?

8 THE DEFENDANT: Yes, I do, sir.

9 THE COURT: Mr. Warren, sir, do you understand that
10 if I do appoint a new lawyer for you, that new lawyer will have
11 the very same professional obligation, which may include
12 telling you things that they believe or even know that you will
13 disagree with in terms of their judgment and their advice.

14 Do you understand that, sir?

15 THE DEFENDANT: Yes, I do, Your Honor.

16 THE COURT: Do you understand it's not a basis to
17 replace a lawyer, the fact that a client disagrees with the
18 advice or judgment of the lawyer as it is communicated to the
19 client.

20 Do you understand that, sir?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: I find and conclude that Mr. Warren is
23 competent, that he knows what he's doing and thinking about
24 these things. The Court bases that on the Court's experience
25 of interacting with Mr. Warren during the course of pretrial

1 and trial proceedings in the case, the Court's personal
2 observations here in open court today, Mr. Warren's answers to
3 the Court's questions. I find that Mr. Warren understands the
4 nature and role of a lawyer and the duties of a lawyer, of
5 candor and completeness in providing their best professional
6 judgment and advice to a client, whether they believe the
7 client will or will not agree with or accept that advice and
8 judgment. I find Mr. Warren to be -- to have a facility in
9 understanding those matters and in communicating them to the
10 Court. From that, the Court draws the conclusion that
11 Mr. Warren is able and effective in communicating those same
12 matters with counsel and, therefore, the Court credits both
13 Mr. Sindler's assessment of the nature of the current state of
14 the relationship he has as a lawyer with Mr. Warren, the
15 client, and the Court finds and credits Mr. Warren's assessment
16 of the state of affairs in terms of that relationship. The
17 Court will, therefore, grant your notion, Mr. Sindler.

18 I will enter an order that you are relieved of your
19 duties at such time as a new lawyer enters their appearance so
20 that there is no gap in the period of time that Mr. Warren has
21 a lawyer in the event there are intervening events,
22 communications, filings on the court docket and those matters.
23 I will enter an order continuing generally, Mr. Warren, that
24 means without a specific new date, the date of sentencing in
25 your case. I can tell you it will be set with reasonable

1 promptness after a new lawyer from the CJA panel is appointed
2 to represent you in this case, to give them an opportunity to
3 reasonably familiarize themselves with the docket. The Court
4 notes from very complete and in the Court's estimation thorough
5 sentencing memoranda that were filed both by Ms. King on behalf
6 of the United States and Mr. Sindler regarding the calculation
7 of the advisory guideline range and the potential application
8 of certain statutory provisions relative to sentencing, that
9 there are not necessarily common sentencing issues that will
10 have to be resolved here and that the new counsel will have to
11 familiarize themselves with.

12 I'm confident that in appointing your new lawyer,
13 Mr. Warren, those matters because they're on the public docket
14 will be matters that are taken into account in causing an
15 appointment of counsel for you who has experience in addressing
16 and dealing with those sorts of matters.

17 So, Mr. Sindler, we will grant your motion. We'll
18 enter an order today granting it but saying the effective date
19 of your withdraw will be the same day as the entry of an
20 appearance of new counsel for Mr. Warren.

21 We'll enter an order generally continuing the
22 sentencing.

23 Mr. Sindler, any other matters that you on your
24 professional judgment or on behalf of Mr. Warren believe the
25 Court should take up today or should address, sir?

1 MR. SINDLER: I filed this reluctantly. I've done
2 this only a couple times in my 21 years of doing this kind of
3 work. But despite that and despite that it was in this case, I
4 will tell you and Mr. Warren can hear me say it, that I will be
5 as cooperative and forthright with whoever takes my place to
6 provide him or her with whatever documents or time on my part
7 to help that person along.

12 Ms. King or Mr. Ortiz, are there any matters that
13 the United States believes we should take up today or you'd
14 like the Court to address or you'd like to bring to the Court's
15 attention?

16 MS. KING: No, Your Honor. Thank you.

17 THE COURT: We'll get that order entered today.
18 That will cause Mr. Babik to formally notify the person who
19 handles the administrative matters regarding appointment of the
20 CJA lawyer to represent Mr. Warren.

23 MR. SINDLER: Mr. Warren just thought that he
24 misunderstood something. You had mentioned a sentencing
25 memorandum, which on a technical level is a little different

1 than a position statement.

2 THE COURT: It was a position statement. You're
3 correct, Mr. Sindler, the documents that were filed were
4 position statements relative to sentencing factors.

5 The next item that would come in, which I held in
6 abeyance because of our hearing today, would be a formal
7 advocacy sentencing memorandum on Mr. Warren's behalf and on
8 behalf of the United States.

9 MR. SINDLER: Even though it was discussed, I never
10 did file a sentencing memorandum on his behalf.

11 THE COURT: The record would reflect that,
12 Mr. Sindler. And nor has Ms. King because the obligation for
13 each of you to do that was held in abeyance because we knew we
14 would have this hearing today.

15 What the Court did get and has reviewed are
16 extensive documentations filed on both Mr. Warren's behalf and
17 the United States' behalf regarding the sentencing factors and
18 the application of certain federal sentencing statutes to the
19 calculation of mandatory minimum sentences and the advisory
20 guideline range in those regards.

21 The final document, the sentencing memorandum, the
22 advocacy document had been held in abeyance and has not been
23 filed.

24 Anything else Mr. Sindler that you or Mr. Warren
25 would like to place on the record.

1 MR. SINDLER: No.

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Mr. Ortiz or Ms. King, anything else the
4 United States would like to place on the record?

5 MS. KING: No, Your Honor.

6 THE COURT: Thank you very much.

7 Mr. Babik, we'll ask those in the courtroom to just
8 remain at ease while the marshals assist Mr. Warren. We'll get
9 that order up hopefully later today.

10 (Court adjourned.)

11 -----

12

13 CERTIFICATE

14

15 I, Juliann A. Kienzle, certify that the foregoing is
16 a correct transcript from the record of proceedings in the
above-titled matter.

17 s/Juliann A. Kienzle, RMR, CRR

18

19 Juliann A. Kienzle, RMR, CRR

20

21

22

23

24

25